

Chapter 13.04

RECREATIONAL AREA REGULATIONS

Sections:

Article I. General Provisions

- 13.04.010 Applicability and scope.
- 13.04.020 Definitions.
- 13.04.030 County co-sponsored activity.

Article II. Prohibitions

- 13.04.040 General prohibitions applicable to all parks and recreation facilities.
- 13.04.045 Alcohol prohibition for Keōpūolani Park.
- 13.04.046 Alcohol prohibitions for Kamehameha Iki Park and Malu'ulu'olele Park in Lahaina.

Article III. Operating Policy

- 13.04.050 Hours.
- 13.04.060 Closed areas.

Article IV. Permits and Fees

- 13.04.070 Priority of use.
- 13.04.080 Fees and deposits.
- 13.04.090 Schedule of fees and deposits.
- 13.04.100 Permit procedure for type II, type II(CC), type II(R), type III, type IV, and type V activities.
- 13.04.110 Liability of permittee.
- 13.04.120 Denial and revocation of permits.
- 13.04.125 Appeals.
- 13.04.130 Duration of use.
- 13.04.140 Rental of department equipment.
- 13.04.150 Refreshment concession.

Article V. Camping

- 13.04.160 Camping areas.
- 13.04.170 Permits.
- 13.04.180 Fees.
- 13.04.190 Curfew.

Article VI. Tennis Courts

- 13.04.200 Use.
- 13.04.210 Teaching, lessons and instructions.

Article VII. Rules and Regulations of the Department

- 13.04.220 Promulgation.

Article VIII. Penalties

13.04.230 Penalties.

Article IX. Disorderly Conduct Committed in a Park or Recreational Facility

13.04.240 Disorderly conduct.

Article X. Commercial Ocean Recreational Activity

- 13.04.250 Applicability.
- 13.04.251 Definitions.
- 13.04.255 Purpose.
- 13.04.256 Prohibitions.
- 13.04.260 Permit requirement—Additional regulation.
- 13.04.270 Permit application—Issuance—Denial—Appeal.
- 13.04.280 Permit conditions.
- 13.04.290 Permit term—Suspension—Revocation.
- 13.04.300 Nontransferability.
- 13.04.310 Inspection of permit.
- 13.04.320 Ocean recreational activity fund.

Article I. General Provisions

13.04.010 Applicability and scope.

A. Except as otherwise provided for in chapters 13.16 and 13.20, this chapter shall apply to all park and recreational facilities within the County of Maui.

B. If any provision of this chapter conflicts with any other ordinance or statute, the stricter provision shall govern.

C. If any section, sentence, clause, or phrase of this chapter, or its application to any person, is for reason held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions of this chapter, or the application of this chapter to other persons shall not be affected. (Ord. 1256 § 2 (part), 1982)

13.04.020 Definitions.

For the purpose of these regulations, certain phrases and words are defined as follows:

"Business" means any enterprise or establishment, including but not limited to, sole proprietorships, joint ventures, partnerships, corporations, fraternal organizations, clubs, unorganized associations or any other entities, whether for profit or not for profit, and includes all employees of the business.

"Business location" means a permanent, fixed place of business located in the County identifiable by a tax map

key number and street address. A post office box number is not sufficient to identify a fixed place of business.

“Camper” means any person who remains or intends to remain at a park or recreational facility in order to use the facility as overnight accommodations.

“Camping” means the use and occupation of any park or recreational facility whereby one or more persons remain or intend to remain at the particular park or recreational facility in order to use the park or facility as overnight accommodations.

“Consume any intoxicating liquor” means possess any bottle, can or other receptacle containing any intoxicating liquor, as defined in section 281-1, Hawaii Revised Statutes, which has been opened, or a seal broken, or the contents of which have been partially removed, unless such container is kept in the trunk of a vehicle, or kept in such other area of a vehicle not normally occupied by the driver or passenger if the vehicle is not equipped with a trunk, and a utility or glove compartment shall be deemed to be within the area occupied by the driver or passenger.

“County” means the County of Maui, State of Hawaii.

“County co-sponsored activity” means an activity authorized by the director of parks and recreation under section 13.04.030 of this chapter.

“County property” means any real or personal property owned by or under the control of the County or any County agency. County property includes, but is not limited to: equipment and fixtures; streets and highways; parking areas; sidewalks, roadway shoulders, easements, and rights-of-way; recreational facilities and community centers; beach accesses; beach parks; and beaches, from the high water mark or vegetation line to the location where other private or public property rights begin or if a certified shoreline map recorded with the State of Hawaii exists, those areas indicated by the map.

“Department” means the department of parks and recreation of the County of Maui.

“Deposit” means a sum of money placed with the department as security for the use and maintenance of parks and recreational facilities.

“Director” means the director of the department of parks and recreation of the County of Maui or an authorized representative.

“Equipment” means tangible business property except any device or conveyance that requires an operating license or permit from the State of Hawaii division of boating and recreation or from the United States Coast Guard.

“Fees” means monetary charges required by the director pursuant to the provisions herein for the authorized use of parks and recreational facilities.

“Nonprofit entity” means an entity which complies with section 501(c) of the Internal Revenue Code and any other requirements under federal, State and County law regulating the conduct of charitable or nonprofit organizations.

“Ocean recreational activity” means engaging in or providing instruction or guidance regarding the use of equipment in any pursuit that is primarily conducted in or on the ocean, including but not limited to kayaking, snorkeling, scuba diving, surfing, kite surfing, and windsurfing, excluding any pursuit requiring an operator to hold a license or permit from the State of Hawaii division of boating and recreation or the United States Coast Guard. Engaging in and providing instruction or guidance to any patron regarding the use of equipment in the same pursuit shall constitute no more than one ocean recreational activity.

“Park or parks” means a public park, including but not limited to any park, park roadway, parking area, playground, athletic field, beach, beach right-of-way, tennis court, and other recreational areas under the control, management and operation of the department of parks and recreation.

“Permit” means a written authorization signed by the director or an authorized representative allowing the use of parks and recreational facilities.

“Personal mobility device” means a mobility aid belonging to any class of multi-wheeled devices and designed for and used by individuals with disabilities, whether operated manually or by a power supply.

“Recreational facility” means any building or other physical structure, including but not limited to swimming pools, gymnasiums, community centers, pavilions, picnic tables, used for recreational purposes and under the control, management, and operation of the department of parks and recreation.

“Rules” means administrative rules of the department of parks and recreation adopted pursuant to section 13.04.220 that implement, interpret, or prescribe policy, procedure or practice as necessary to carry out this chapter’s requirements.

“Type I activity” means an activity organized and conducted by the County of Maui, or any other agency, department or division of the State of Hawaii or its political subdivisions, or by the United States federal government; provided no revenues are generated by the activities of said other agencies, departments or divisions.

“Type II activity” means an activity open to the public and co-sponsored by the County which does not generate revenue by charges or donations for admission to attend the activity or from other revenue-generating sources related to the activity such as registration or participation fees, but

excluding revenues generated from temporary refreshment concessions as defined in section 13.04.150(C).

“Type II(CC) (community class) activity” means an activity open to the public, organized and conducted by an instructor approved by the community class program for the County of Maui department of parks and recreation, which generates revenues by charging for admission to attend the activity.

“Type II(R) activity” means an activity open to the public and co-sponsored by the County which generates revenues by charges or donations for admission to attend the activity or from other revenue-generating sources related to the activity such as registration or participation fees and concessions.

“Type III activity” means an activity organized and sponsored by a person, registered political candidate, political organization, or nonprofit entity which does not generate revenue by charges or donations for admission to attend the activity such as registration or participation fees, but excluding revenues generated from temporary refreshment concessions as defined in section 13.04.150(C). On-going (thirty days or longer) organized youth and adult sport leagues that assess registration or participation fees to their participants or members may qualify under this type III category, provided the director confirms that the fees assessed are solely being used to offset the expenses of operating such leagues such as equipment, insurance, officiating, and park/facility permit fees and expenses.

“Type IV activity” means an activity organized and sponsored by a registered political candidate, political organization, or nonprofit entity which generates revenue by charges or donations for admission to attend the activity or from other revenue-generating sources related to the activity such as registration or participation fees, and concessions.

“Type V activity” means an activity organized and sponsored by a person or entity for the purpose of carrying on a profit-making enterprise.

“Visiting swim team” means a swim team not from the County of Maui. (Ord. 3150 § 2, 2003; Ord. 3143 § 2, 2003; Ord. 3120 § 1, 2003; Ord. 2843 §§ 1—5, 2000; Ord. 2780 §§ 1—5, 1999; Ord. 2441 § 1, 1995; Ord. 1256 § 2 (part), 1982)

13.04.030 County co-sponsored activity.

A. For the purpose of this chapter an activity is deemed to be County co-sponsored where the activity is certified as such by the director of any County department under criteria established by that department.

B. The director shall allow the use of the park and/or recreational activity on the basis of the first written application received, subject to the following conditions:

1. The activity shall not be for more than three consecutive days unless authorized by the director, upon the director’s finding that the additional amount of time is in the public interest. Upon such a finding, the director shall inform the council of the activity, its duration, and the public interest that will be served;

2. That the activity shall be held by or for a nonprofit entity;

3. That the County may provide utilities for the activity if available;

4. Other than the services provided for in section 13.04.030.B.3, the activity does not require the expenditure of County funds and will not require the services of any County employee;

5. That the person or entity conducting the activity shall clean and restore the premises.

C. The director shall, on or before July 15 of each year, provide to the council a list of all County co-sponsored activities that have taken place between July 1 and June 30 of the previous fiscal year. These reports shall also include:

1. The purpose of each event or activity;
2. The reasons for County co-sponsorship;
3. The organization or entity that conducted the activity;
4. The length of time over which the activity took place;
5. The location of the activity. (Ord. 1256 § 2 (part), 1982)

Article II. Prohibitions

13.04.040 General prohibitions applicable to all parks and recreation facilities.

A. Within the limit of any park or within any recreational facility, it is unlawful for any person to:

1. Abandon any vehicle or other personal property or leave any vehicle or other personal property unattended for a period in excess of twenty-four hours;

2. Throw or dispose of any refuse or any waste material except in a receptacle designated for such;

3. Permit any animal, except as hereinafter provided in subsection D of this section, to enter and to remain within the confines of any park area;

4. Destroy, injure, deface, or remove in any manner any public structure, sign, equipment, monument, or device;

5. Discharge firearms, air rifles, or spring guns, except at a range established and regulated for that specific purpose;

6. Defecate or urinate on the grounds or improvements of any park or recreational facility, except in properly functioning toilets or urinals in public restrooms.

B. Except as otherwise authorized by permit, license, lease or concession issued in accordance with the Maui County Code, it is unlawful for any person, within the limits of any park or recreational facility to:

1. Distribute, post or place any commercial handbill or circular, notice or other advertising material;
2. Wash, polish or repair cars or other vehicles;
3. Store, repair, or condition any boat, canoe, raft or other vessel;
4. Park or operate any vehicle on grassed and sand areas with the exception of a personal mobility device;
5. Use or operate loudspeakers;
6. Dance on any gymnasium floor;
7. Engage in archery;
8. Kindle, build, maintain or use any fire other than in a grill or hibachi;
9. Consume any intoxicating liquor, as defined in section 281-1, Hawaii Revised Statutes, while within the boundaries of any park or recreational facility, if any boundary of that park or recreational facility is located within a one-thousand five hundred foot radius of any boundary of any public or private school or preschool, between the hours of six a.m. and five p.m., Mondays through Fridays, except state and County holidays;

10. Consume any intoxicating liquor at any time in any public restroom;

11. Consume any intoxicating liquor between the hours of eleven p.m. and six a.m. in any park or recreational facility, except civic and community centers, provided that this prohibition shall not apply to Molokai.

C. The director may designate, by posting signs, areas where the following activities are not permitted:

1. Throw, cast, roll, catch, kick, or strike any baseball, tennis ball, football, basketball, croquet ball, bowling ball, or golf ball;

2. Ride on roller skates, skate boards, or bicycles.

D. Regulation on Animals.

1. The director is authorized to set aside areas within parks for horse riding, animal shows, and dog obedience classes and trials.

2. Dogs shall be permitted in all parks provided that they shall be on a leash.

E. Regulation on motor vehicles. The director may prohibit or restrict the operation or parking of a motor vehicle within the premises of any park or the premises of a recreational facility.

F. Any other use or activity not provided for under this article may be permitted in accordance with the terms of this chapter and the rules of the department. (Ord. 3150 § 3, 2003; Ord. 2447 § 1, 1995; Ord. 2389 § 1, 1994; Ord. 1256 § 2 (part), 1982)

13.04.045 Alcohol prohibition for Keōpūolani Park.

Except as otherwise authorized by permit, license, lease, or concession issued in accordance with the Maui County Code, it is unlawful for any person to consume any intoxicating liquor, as defined in section 281-1, Hawaii Revised Statutes, while within the boundaries of Keōpūolani Park, provided that this prohibition shall not prohibit the consumption of intoxicating liquor at the Maui arts and cultural center. (Ord. 2683 § 1, 1998)

13.04.046 Alcohol prohibitions for Kamehameha Iki Park and Malu'ulu'olele Park in Lahaina.

Except as otherwise authorized by permit, license, lease or concession issued in accordance with the Maui County Code, it is unlawful for any person to consume any intoxicating liquor, as defined in section 281-1, Hawaii Revised Statutes, while within the boundaries of either Kamehameha Iki Park or Malu'ulu'olele Park. (Ord. 2720 § 1, 1998)

Article III. Operating Policy

13.04.050 Hours.

Unless otherwise ordered by the director, all parks shall be open to the public every day of the year during designated hours as established by the director. The opening and closing hours for each park and recreational facility shall be posted therein. (Ord. 1256 § 2 (part), 1982)

13.04.060 Closed areas.

A. Any park or recreational facility or section thereof may be closed to the public by the director at any time when the director finds such to be reasonably necessary for the protection of the health, safety and welfare of the public.

B. Upon such a finding, the director shall state in writing the reasons for the closing of the park or recreational facility and file such reasons with the council within ten days from the date of the closing. The written statement shall be available in the following alternative formats upon request: large format, braille, audiotape, and simplified language. In addition, the director shall file, upon request of the council, weekly status reports with the council outlining the current status of the problem within the park or recreational facility, any actions taken to minimize those problems, effectiveness of those actions taken and any proposed future actions contemplated to be taken by the director until such time as the park or recreational facility is reopened. (Ord. 3150 § 4, 2003; Ord. 1256 § 2 (part), 1982)

Article IV. Permits and Fees

13.04.070 Priority of use.

If more than one person or organization applies for the use of a park or recreational facility for the same time period and the mutual use by the applicants is incompatible, as determined by the director, priority as to use will be given on the basis of the first written application received by the respective permit office. Applications shall be available in the following alternative formats upon request: large format, braille, audiotape, and simplified language. (Ord. 3150 § 5, 2003; Ord. 1256 § 2 (part), 1982)

13.04.080 Fees and deposits.

A. Fees. Fees shall be charged for the use of parks or recreational facilities by persons or organizations desiring to engage in type II, type II(CC), type II(R), type III, type IV, and type V activities; provided, however, with regard to type III activities, there shall be no charge for the use of parks or recreational facilities by senior citizen organizations, adult-supervised youth organizations, or persons with disabilities organizations. Fees shall be charged in accordance with the fee schedule set forth in section 13.04.090. Such fees shall be paid at the time of the application for the permit and at least sixty days prior to the date of the scheduled activity; provided, however, with regard to type III activities, permit fees may be paid less than sixty days prior to the scheduled activity, but shall be paid at the time of application for the type III permit in cash, bank cashier's check, or money order only.

B. Custodial deposit. A custodial deposit shall be required for use of parks or recreational facilities by persons or organizations desiring to engage in type II, type II(R), type III, type IV, and type V activities. The deposit shall serve as security for the cleaning and repairing of park or recreational facility premises. The custodial deposit may be paid at the time of application for the permit, but shall be paid no later than sixty days prior to the date of the scheduled activity; provided, however, with regard to type III and type IV activities, the custodial deposit shall be paid no later than the last business day prior to the scheduled activity in cash, bank cashier's check, or money order only. Failure to pay the custodial deposit shall result in the immediate cancellation of the permit. Custodial deposits shall be refundable within twenty-one days after the activity, upon determination by the director that the cleaning and restoration of the facilities or park have been satisfactorily performed. Custodial deposits shall be forfeited to the department if restoration is not completed within the time provided for on the permit. If the permit holder does not satisfactorily clean and restore the facility or park, the department shall perform the necessary cleaning and restoration, deduct the cost of the

cleaning and restoration from the deposit and recover by legal means available, any cost in excess of said deposit.

The director shall deny any future permits to permit holders for a period of one year upon the failure on the part of the permit holder to:

1. Satisfactorily clean and restore any park or recreational facility; or
2. Pay any cost in excess of the above-mentioned cleaning deposit.

C. Key deposit. A key deposit as set forth in the annual budget shall be required for the use of recreational facilities by persons or organizations desiring to engage in type II, type II(CC), type II(R), type III, type IV, or type V activities. Key deposits are refundable within twenty-one days after the return of the key to the department. Key deposits will be forfeited to the department in the event that the key is not returned to the department within twenty-four hours after termination of the activity.

D. Cancellation fees. Notice of cancellation shall be given in person, or by returning the permit not less than seven calendar days prior to a scheduled type II or type II(R) activity; if no notice is given, there shall be a cancellation fee charged equal to one-half of the custodial deposit. Notice of cancellation shall be given in person, or by returning the permit not less than fourteen calendar days prior to a scheduled type III activity; if no notice is given, there shall be a cancellation fee charged equal to one-half of the custodial deposit. Notice of cancellation shall be given in person, or by returning the permit not less than twenty-one days prior to a scheduled type IV activity; if no notice is given, there shall be a cancellation fee charged equal to one-half of the custodial deposit. Notice of cancellation shall be given in person, or by returning the permit not less than thirty days prior to a scheduled type V activity; if no notice is given, there shall be a cancellation fee charged equal to the full amount of the custodial deposit. (Ord. 3150 § 6, 2003; Ord. 3120 § 2, 2003; Ord. 2969 § 1, 2001; Ord. 2889 §§ 1, 2, 2000; Ord. 2843 § 6, 2000; Ord. 2780 § 6, 1999; Ord. 1812 § 1, 1989; Ord. 1776 § 1, 1988; Ord. 1256 § 2 (part), 1982)

13.04.090 Schedule of fees and deposits.

The director shall require the payment of fees and deposits for type II, type II(CC), type II(R), type III, type IV, type V activities, and visiting swim teams, as set forth in the annual budget. (Ord. 3120 § 3, 2003; Ord. 2843 § 7, 2000; Ord. 2780 § 7, 1999; Ord. 2365 § 1, 1994; Ord. 1812 § 2, 1989; Ord. 1256 § 2 (part), 1982)

13.04.100 Permit procedure for type II, type II(CC), type II(R), type III, type IV, and type V activities.

A. Application. Any person, entity, or organization seeking issuance of a permit for type II, type II(CC), type II(R), type III, type IV, or type V activities shall file a written application with the department. Applications shall be available in the following alternative formats upon request: large format, braille, audiotape, and simplified language. The application shall include the following:

1. Name and address of the person or entity applying for the permit and the name and address of any responsible agent for the applicant;
2. Name and address of the person or organization sponsoring the activity;
3. The nature of the activity to be engaged in by the person or organization;
4. The day and hours for which the permit is requested;
5. The park or recreational facility or portion thereof for which the permit is requested;
6. An estimate of the anticipated attendance;
7. Certification of payment in full of all required fees and deposits;
8. Any other information which the director may require in making the determination as to whether the permit should be granted.

B. Responsibilities of the applicant. Any applicant granted a permit for type II, type II(CC), type II(R), type III, type IV, or type V activities shall:

1. Obtain the necessary permits required by state and other County agencies;
2. Secure necessary utility services not provided by the department;
3. Hire personnel deemed necessary by the director for the safety and welfare of the general public;
4. Perform any services deemed necessary by the director to accommodate the planned activity;
5. Perform or cause to be performed daily custodial services while the permit is effective and a cleaning and restoration after the use of the park or recreational facility;
6. File, if required by the director, a tax clearance statement with the State of Hawaii and the director within forty-eight hours after the expiration of the permit.

C. Any applicant granted a permit for a type V activity shall file a gross income statement with the tax collector of the state within forty-eight hours after the close of the final performance of the event and shall submit a copy of such statement to the director. (Ord. 3150 § 7, 2003; Ord. 3120 § 4, 2003; Ord. 2843 § 8, 2000; Ord. 1256 § 2 (part), 1982)

13.04.110 Liability of permittee.

A. Any person or organization who has been issued a permit for a type II, type II(CC), type II(R), type III, type IV or type V activity shall be required to execute an indemnity agreement with the County of Maui providing that it shall defend, indemnify, and hold harmless the County, its officers, agents, and employees for any liability, damage, loss, or injury to any person or property which arises from the negligent, wrongful, unlawful conduct by the permittee in the use of the County park or recreational facility for which the permit has been issued.

B. The director shall require persons and organizations desiring to engage in type V activities to secure general liability, property damage and other insurance, in amounts and kinds established by the director of finance. The director may require general liability, property damage and other insurance coverage for activities other than type V activities in the director's discretion, based on a review of risks inherent to such activities. All insurance shall include the County as an additional insured on such policies. (Ord. 3120 § 5, 2003; Ord. 1256 § 2 (part), 1982)

13.04.120 Denial and revocation of permits.

A. Denial. The director shall have the authority to deny the issuance of a permit upon the determination that an applicant, in previously using any park facility has:

1. Operated or used the park facility in an illegal or disorderly manner;
2. Allowed or created a dangerous or intolerable situation to occur; or
3. Violated any applicable federal, State or County laws or regulations, including but not limited to, the prohibitions listed in subsections 13.04.040, A and B.

B. Revocation. The director shall have the authority to revoke an issued permit upon the determination that the permit holder, in using the park facility, will:

1. Operate or use the park facility in an illegal or disorderly manner;
2. Allow or create a dangerous or intolerable situation to occur; or
3. Violate any applicable federal, State or County laws or regulations, including but not limited to, the prohibitions listed in subsections 13.04.040, A and B. (Ord. 3021 § 1 (part), 2001; Ord. 1256 § 2 (part), 1982)

13.04.125 Appeals.

Any person aggrieved by a decision or order of the director may file an appeal with the board of variances and appeals pursuant to chapter 19.520, Maui County Code, and the rules of practice and procedure as adopted by the board of variances and appeals.

A. Procedure. Pursuant to the board of variances and appeals' rules, a contested case hearing shall be held on the appeal. The department, through the director shall be a party to the proceedings.

B. Standard of appeal. The board of variances and appeals may affirm, reverse, or modify, in whole or in part, any decision or order of the director under appeal, provided the board of variances and appeals finds the decision or order is:

1. Based on a clearly erroneous finding of material fact or erroneous application of the law; or
2. Arbitrary or capricious in its application; or
3. A clearly unwarranted abuse of discretion; and
4. A reversal or modification of the decision or order will not jeopardize life, limb, or property. (Ord. 3021 § 2 (part), 2001)

13.04.130 Duration of use.

A. A use permit for type II, type II(CC), type II(R), type III and type IV activities at any park or recreational facility shall not be given to any person or organization for more than three consecutive days, unless otherwise authorized by the director, upon the director's finding that the additional amount of time is in the public interest. Upon such a finding, the director shall inform the council of the activity, its duration, and the public interest it will serve.

B. A use permit for type V activities at any park or recreational facility shall not be given to any person or organization for more than three consecutive days unless otherwise authorized by council resolution. (Ord. 3120 § 6, 2003; Ord. 1256 § 2 (part), 1982)

13.04.140 Rental of department equipment.

A. Subject to availability:

1. County platforms may be rented to any person or organization engaged in type III, type IV, or type V activities at a daily rate of \$10 per platform.

2. Bleachers may be rented to any person or organization engaged in type III, type IV, or type V activities at a daily rate of \$25 per bleacher section.

3. Picnic tables may be used by any person or organization engaged in type III, type IV, or type V activities without charge, provided a security deposit per day per table as set forth in this subsection is received by the department prior to the release of such table(s):

- (a) \$5 for type III activity;
- (b) \$10 for type IV activity;
- (c) \$15 for type V activity.

The deposit shall be refundable upon determination by the director that the table(s) has been returned in a clean and satisfactory condition, ordinary wear and tear excepted. The deposit will be forfeited to the department for the repair,

restoration, or replacement of any returned table(s) determined by the director to be damaged or otherwise not in satisfactory condition. Transportation of any rented equipment or picnic tables, if necessary, shall be the responsibility of the person, entity, or organization requesting the rental or use of the equipment or tables.

B. The department may, at the director's determination, assign temporarily at no cost, its public address system to governmental agencies.

C. Any damage to loaned equipment shall be paid for by the person or entity using the equipment in an amount equal to replacement cost as identified by the director. (Ord. 2843 § 9, 2000; Ord. 1256 § 2 (part), 1982)

13.04.150 Refreshment concession.

Refreshment concessions in the County parks shall be administered by the director of finance as follows:

A. The director of finance shall designate buildings within the County parks and recreational areas that are suitable for permanent refreshment concession facilities.

B. Permanent refreshment concession facilities shall be administered in accordance with chapter 3.40.

C. Temporary refreshment concessions may be permitted by the director of finance in buildings and on areas in the County parks that are not designated as permanent refreshments concession facilities under the following conditions:

1. The temporary refreshment concession for any type II, type II(CC), type II(R), type III, type IV, or type V activity shall be without charge to the person or organization who has been granted a permit by the director of parks and recreation to engage in the type II, type II(CC), type II(R), type III, type IV, or type V activity.

2. If the type II, type II(CC), type II(R), type III, type IV, or type V permittee declines to operate the temporary refreshment concession, the director of finance may, at his discretion, grant the concession at any school, church, or other nonprofit entity which is on a temporary refreshment concession list.

3. Nonprofit entities, schools, or churches requesting permission to operate a temporary refreshment concession shall file a written application with the director of finance, together with proof of nonprofit status. Applications shall be available in the following alternative formats upon request: large format, braille, audiotape, and simplified language. The director of finance shall maintain a list of all entities which qualify to operate the temporary refreshment concession stand and award the concession to such organizations in chronological order as to time of filing and acceptance of the application as certified by the director of finance.

4. The director of finance may place conditions upon the granting of a concession under this section. (Ord. 3150 § 8, 2003; Ord. 3120 § 7, 2003; Ord. 2843 § 10, 2000; Ord. 1256 § 2 (part), 1982)

Article V. Camping

13.04.160 Camping areas.

A. Camping shall be permitted in the following parks, subject to the provisions of this chapter:

1. One Alii Beach Park — Molokai;
2. Papohaku Beach Park — Molokai;
3. Kanaha Beach Park — Kahului, Maui;
4. Papalaua Wayside Park — Lahaina, Maui.

B. Except as otherwise provided for, camping shall be restricted to specific camping areas designated and posted for such purpose by the director in the parks listed in subsection A of this section. The director may permit nonprofit organizations or groups to camp in the parks listed in subsection A of this section, or in any other park, for special events. The director may curtail or prohibit camping at any park or withdraw any permit issued if the director determines that the camping is or would be detrimental to the public health, safety, and welfare, or in violation of law. (Ord. 3032 § 1, 2002; Ord. 2969 § 2, 2001; Ord. 2430 § 1, 1995; Ord. 1461 § 1, 1985; Ord. 1256 § 2 (part), 1982)

13.04.170 Permits.

A. Applicants for camping permits shall be eighteen years of age or older.

B. Any person or organization desiring to camp at a park shall first obtain a camping permit from the director by applying for same in person or in writing to the Department of Parks and Recreation, County of Maui, War Memorial Gym, Wailuku, Maui, Hawaii 96793.

C. Permits shall be limited to a maximum of three consecutive days for each camping site.

D. Any person or organization shall have in its possession a copy of the permit. (Ord. 1256 § 2 (part), 1982)

13.04.180 Fees.

A. Any person or organization applying for a camping permit shall at the time of application provide the following fees to the director:

1. Adults (eighteen years of age and older), \$3 per day;
2. Children (under eighteen years of age), fifty cents per day. (Ord. 1256 § 2 (part), 1982)

13.04.190 Curfew.

Only persons camping pursuant to duly issued camping permits shall enter or remain in camping areas within county parks between twelve midnight and six a.m. (Ord. 1256 § 2 (part), 1982)

Article VI. Tennis Courts

13.04.200 Use.

Tennis courts shall be open to the public on a first-come-first-served basis except when there is scheduled a tournament or lesson. (Ord. 1256 § 2 (part), 1982)

13.04.210 Teaching, lessons and instructions.

No person shall schedule use of tennis facilities to give lessons unless such lessons are type II activity. (Ord. 1256 § 2 (part), 1982)

Article VII. Rules and Regulations of the Department

13.04.220 Promulgation.

The director may promulgate such rules and regulations pursuant to the Hawaii Administrative Procedures Act to implement any of the provisions of this chapter. (Ord. 1256 § 2 (part), 1982)

Article VIII. Penalties

13.04.230 Penalties.

Any person violating any provision of this chapter, shall, upon conviction, be subject to a fine up to \$500. (Ord. 1256 § 2 (part), 1982)

Article IX. Disorderly Conduct Committed in a Park or Recreational Facility

13.04.240 Disorderly conduct.

Any police officer responding to a complaint of disorderly conduct as defined by Hawaii Revised Statutes, section 711-1101, may take the following course of action where the officer has reasonable grounds to believe that an individual has committed the offense of disorderly conduct within the limits of any park or recreational facility within the County of Maui.

A. Where the police officer has reasonable grounds to believe that there has been a recent act of disorderly conduct by an individual, regardless of whether the act of disorderly conduct occurred in the officer's presence, the police officer may make reasonable inquiry of any individual whom the

officer reasonably suspects is the subject of the complaint and other witnesses as there may be;

B. Where the police officer has reasonable grounds to believe that the disorderly conduct may continue, the police officer may lawfully order the person to leave the park or recreational facility for a cooling off period of up to twelve hours; and

C. All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. Warnings shall be available in the following alternative formats upon request: large format, braille, audiotape, and simplified language. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases; and

D. If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the cooling off period, the person shall be placed under arrest for the purpose of preventing further physical inconvenience or alarm by a member or members of the public.

E. Refusal to comply with the lawful order of a police officer under subsection B of this section is a misdemeanor.

F. Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting the arrest.

G. This section shall not operate as a bar against prosecution under any other section of the Penal Code of the Hawaii Revised Statutes. (Ord. 3150 § 9, 2003; Ord. 2692 § 2, 1998)

Article X. Commercial Ocean Recreational Activity*

* Editor's Note: The effective date of chapter 13.04, Article X, has been extended until June 30, 2005, by Ordinance 3198.

13.04.250 Applicability.

A. This article regulates commercial ocean recreational activity in or on County property.

B. This article does not apply to competitions or events necessitating permits pursuant to article IV. (Ord. 3143 § 4 (part), 2003)

13.04.251 Definitions.

For purposes of this article, certain phrases and words are defined as follows:

"Applicable rules" means rules consistent with this article's purpose.

"Applicant" means a business applying for a permit.

"Commercial ocean recreational activity" means ocean recreational activity conducted by a business for a patron in or on a County beach park or other County property.

"Patron" means any person who contracts to participate in ocean recreational activity.

"Permit" means a permit issued pursuant to section 13.04.270, unless a different type of permit is specified. (Ord. 3143 § 4 (part), 2003)

13.04.255 Purpose.

This article's purpose is to fairly and effectively regulate commercial ocean recreational activity to ensure that County beach parks and other County property are utilized for the community's maximum recreational, environmental, and economic benefit. (Ord. 3143 § 4 (part), 2003)

13.04.256 Prohibitions.

Commercial ocean recreational activity is prohibited at Baldwin Beach Park, Cove Park, Hookipa Beach Park, Kamaole Beach Park I, Kamaole Beach Park II, Kamaole Beach Park III, the southern portion of Kalama Park (the section of Kalama Park from the sand beach at Cove Park to the southern most parking area adjacent to South Kihei Road), Launiupoko Beach Park, and Puamana Beach Park. (Ord. 3143 § 4 (part), 2003)

13.04.260 Permit requirement—Additional regulation.

A. It is unlawful for any business to conduct commercial ocean recreational activity without a permit.

B. If a business chooses not to obtain a permit pursuant to section 13.04.270, a type V permit as required pursuant to article IV shall be obtained before a business may conduct commercial ocean recreational activity.

C. A separate permit shall be required for each commercial ocean recreational activity.

D. Additional regulation of commercial ocean recreational activity shall be established by applicable rules, including but not limited to the days, time, place, and volume of use of County beach parks. (Ord. 3143 § 4 (part), 2003)

13.04.270 Permit application—Issuance—Denial—Appeal.

A. Permit applications shall be available and may be submitted at district park offices. An applicant may seek multiple permits in a single application.

B. A permit application shall be in writing, properly verified under oath, and shall not be deemed complete until such application sets forth and includes the following:

1. The applicant's name, business location address, mailing address, and telephone numbers;
2. The specific ocean recreational activity for which the permit is being sought;
3. The name of the County beach park;
4. A list stating the license number, type, description, and gross vehicle weight of all motor vehicles to be used by the applicant;
5. Any other information required by applicable rules;
6. An application fee and a permit fee as set forth in the annual County budget;
7. The number of certified copies needed for the business to comply with section 13.04.310;
8. State and federal tax clearance certificates; and
9. A list of the equipment to be used by the applicant.

C. Within five business days from receipt of a complete application, the director shall submit a copy of the complete application to the department of police. The department of police shall within twenty business days from the receipt thereof submit to the director a written report with any recommendations or special conditions that may be necessary or desirable. If the department of police does not submit a report within twenty business days, it shall be deemed to have submitted a report with no comments on the application. Upon request from the department of police, the director may grant the department additional time to review the application, in accordance with applicable rules.

D. An applicant shall notify the director within five business days of a change to any information required to be included in the application after the application is submitted for approval or after the permit has been issued. Failure to comply may result in suspension or revocation of the permit.

E. The director may issue the permit, upon payment of any required fee, with or without special conditions or requirements in accordance with applicable rules. The director shall issue or deny the permit within thirty business days of the director's receipt of the department of police's report. If the director denies the permit, the director shall notify the applicant in writing of the decision, setting forth the reasons for the denial. If the director does not issue or deny the permit within thirty business days of the director's receipt of the department of police's report, the permit shall be deemed denied.

F. Any decision by the director under this article may be appealed by the applicant in accordance with section 13.04.125. (Ord. 3143 § 4 (part), 2003)

13.04.280 Permit conditions.

All permits shall be subject to the following conditions:

A. The permit holder shall provide proof of current American Red Cross certification in cardiopulmonary resuscitation (CPR) and first aid, or equivalent certification;

B. All transactions necessary to entitle a patron to engage in ocean recreational activity (including but not limited to selection of activities to be engaged in, selection of equipment, execution of rental agreements, payment for services, distribution or posting of commercial notices, advertising, signage or tents) shall be accomplished at the permit holder's business location. No such transactions shall be permitted or performed in or on County property;

C. In the event applicable rules designate an exclusive area in or on County property for unloading, rigging, assembly, and disassembly of the permit holder's equipment, such activities shall be completed in that area and for no more than thirty minutes at a time; and

D. Only equipment authorized by the permit shall be unloaded from a vehicle. All other equipment shall remain enclosed in or placed on top of the vehicle used to transport the equipment. No equipment may be displayed, stored, maintained, or repaired in or on County property.

E. The permit holder shall:

1. Name the County as an additional insured on the permit holder's general liability insurance policy of at least \$1,000,000, which insurance shall include a duty to defend the County if the County is sued as the result of the permit holder's commercial ocean recreational activity. The insurance policy shall be issued by a provider that is acceptable to the County, as evaluated by standards established by applicable rules.

2. Provide the County with a copy of the insurance policy in which the County is named as an additional insured; and

3. Execute an indemnification agreement with the County covering any losses sustained as the result of the permit holder's commercial ocean recreational activity, over and above those losses covered by the permit holder's general liability insurance coverage.

F. The permit holder shall submit an acceptable safety policy, as evaluated by standards established by applicable rules. (Ord. 3143 § 4 (part), 2003)

**13.04.290 Permit term—Suspension—
Revocation.**

A. Permits issued pursuant to this article shall have a duration of up to one year pursuant to standards in applicable rules and shall expire automatically, without notice to the permit holder, on the date specified on the permit.

B. The director may suspend or revoke any permit issued pursuant to this article if the permit holder has violated any rule, ordinance, or statute related to the commercial ocean recreational activity. (Ord. 3143 § 4 (part), 2003)

13.04.300 Nontransferability.

Permits shall be nontransferable. (Ord. 3143 § 4 (part), 2003)

13.04.310 Inspection of permit.

The permit holder shall at all times keep the permit in a prominent place, convenient for inspection, at the business location. Each permit holder shall also possess a copy of the appropriate permit while engaged in commercial ocean recreational activity. (Ord. 3143 § 4 (part), 2003)

13.04.320 Ocean recreational activity fund.

There is hereby established and created a fund to be known as the "ocean recreational activity fund". Any fees collected pursuant to this article shall be deposited in the ocean recreational activity fund, are hereby deemed appropriated upon receipt, and may be expended for purposes relating to the implementation of this article, including but not limited to the provision of salaries, the purchase of equipment, and the maintenance of County property. (Ord. 3143 § 4 (part), 2003)